GENISYS INTEGRATED ENGINEERS PTE LTD A

v.

PATI SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR B
HAMID SULTAN ABU BACKER J
[SUIT NO: D5-22-1886-2003]
12 APRIL 2012

CIVIL PROCEDURE: *Striking out - Application for - Delay in filing striking out action - Whether action should be struck out - Rules of the High Court 1980, O. 32 r. 2(2) - Discretionary power of judge to strike out - Whether delay gave rise to substantial risk of unfair trial - Factor for judge's consideration in exercising discretion - Inherent jurisdiction of court* C D

The plaintiff commenced the present action against the defendant in 2003. The court then ordered the plaintiff to replace 'Genisys Integrated' with 'UEM Genisys' and two years after the order, UEM Genisys sought leave from the court to substitute UEM Genisys with the plaintiff. In 2008, the court granted leave and UEM Genisys was required to amend its writ of summons and statement of claim. However, it was only in February 2012 that the plaintiff sought to extend time to file the amended writ of summons and statement of claim. The defendant applied to strike out the plaintiff's action for want of prosecution and for extension of time to file the necessary amendments. The plaintiff took a preliminary objection against the defendant's application and argued that the defendant's ground of application under O. 34 r. 7 of the Rules of the High Court 1980 ('RHC 1980') and/or inherent jurisdiction of the court was misconceived. The plaintiff relied on the principle in *Idealmart Rukindo Sdn Bhd v. Capital OCA Berhad & Anor* and argued that since it had filed two Forms 63 for case management, the defendant should have relied on O. 34 r. 2 of the RHC 1980 if it had intended to strike out the matter. E F G H

Held (allowing application to strike out):

(1) In a case where the file was dormant after close of pleadings, O. 32 r. 2(2) of the RHC 1980 would come into operation. The defendant could rely on the said order and apply to the judge to issue a Form 64 Notice to the plaintiff requiring him I

to show cause as to why the action should not be struck out. The rules of procedure have many provisions to enable the court to strike out for various reasons. (para 4)

(2) The underlying principle in striking out for want of prosecution is that a plaintiff who had commenced an action against a defendant must comply with the prescribed rules of practice to prosecute his action expeditiously. (para 10)

(3) A judge has a discretionary power to strike out an action for want of prosecution if either the default had been intentional and contumelious or the plaintiff had been guilty of inordinate and inexcusable delay in prosecuting his claim and such delay gives rise to a substantial risk that it is not possible to have a fair trial, or is likely to have caused serious prejudice to the defendant irrespective of whether the prejudice affects the actual conduct of the trial. There is no rule of law that deprive the courts of the power to exercise their discretion to strike out an action for want of prosecution, no matter what the conduct of the defendant may have been. However, the conduct is a relevant factor to be taken into account by a judge in exercising this discretion. (para 10)

(4) The court has inherent jurisdiction to strike out any cause or matter for any justifiable reasons within the norms of procedural jurisprudence and practice. This is more so now since O. 34 of the RHC 1980 requires the court to deal with such issues at case management stage itself to ensure just, economical and expeditious disposal of the case. Any form of delay may amount to abuse in the present system of 'tracking' and case management and the undertaking given by the Chief Justice to the public that any suit in the court filed will be disposed of within 9 to 12 months. (para 10)

Case(s) referred to:

Abdul Rahim Ponniah Abdullah v. Kulim Intensive Driving Centre Sdn Bhd [2000] 1 LNS 204 HC ***(refd)***

American International Assurance Bhd v. Coordinated Services L Design Sdn Bhd [2012] 1 CLJ 506 CA ***(refd)***

Birkett v. James [1977] 2 All ER 801 ***(refd)***

Charles Forte Investment Ltd v. Amanda [1963] 1 Ch D 240 ***(refd)***

Chip Chong Sawmill Co Sdn Bhd & Ors v. Chai Khiun Fui [1978] 1 LNS 28 FC ***(refd)***

Confidence Concrete Sdn Bhd v. Shimizu Peremba Sdn Bhd [1994] 3 CLJ 300 HC ***(refd)***

Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor and another appeal [2008] 6 CLJ 334 CA ***(refd)***

Genisys Integrated Engineers Pte Ltd v. UEM Genisys Sdn Bhd & Ors [2009] 1 LNS 1202 CA ***(refd)***

Hock Seng Construction Sdn Bhd & Anor v. Yeoh Poh Owi & Anor [2001] 4 CLJ 1 CA ***(refd)***

Idealmart Rukindo Sdn Bhd v. Capital OCA Berhad & Anor [2009] 1 LNS 75 HC ***(refd)***

Jallcon (M) Sdn Bhd v. Nikken Metal (M) Sdn Bhd (No. 3) [2002] 7 CLJ 400 HC ***(refd)***

Jublilee Karonoh v. Ahmad Patong & Ors [2011] 1 LNS 1372 HC ***(refd)***

Kilang Papan Pulau Sebang Sdn Bhd v. Lim Trading & Co [2004] 1 LNS 370 HC ***(refd)***

Lee Mun Tuck v. Tan Chin Kah & Anor [1991] 1 CLJ 631; [1991] 4 CLJ (Rep) 929 HC ***(refd)***

MAE Sdn Bhd & Ors v. Perwira Habib Bank Malaysia Bhd, Kuala Terengganu [1999] 4 CLJ 709 HC ***(refd)***

Malayan Flour Mills Bhd v. Teh Wee Kok [2005] 7 CLJ 213 HC ***(refd)***

MBF Finance Bhd v. Alluwi Salleh T/A ABS Bina Enterprise & Anor [2002] 2 CLJ 133 HC ***(refd)***

Md Amin Md Yusof & Anor v. Cityvilla Sdn Bhd [2004] 3 CLJ 88 CA ***(refd)***

Mokhtar Amin v. Mohamed Moktar Omar [2001] 4 CLJ 489 CA ***(refd)***

Nadarajan Verayan v. Hong Tuan Teck [2008] 1 CLJ 798 HC ***(refd)***

Negara Properties Sdn Bhd v. Akitek Bersekutu Malaysia & Ors [1996] 2 CLJ 923 HC ***(refd)***

Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (intervener) [2006] 3 CLJ 360 HC ***(refd)***

Ong Guan Teck & Ors v. Hijjas Kasturi [1982] CLJ 31; [1982] CLJ (Rep) 616 HC ***(refd)***

Punca Klasik Sdn Bhd v. Seok Kim Leow [1996] 4 CLJ 399 HC ***(refd)***

Ratnam v. Cumarasamy & Anor [1964] 1 LNS 237 PC ***(refd)***

Saeed U Khan v. Lee Kok Hooi [2000] 7 CLJ 454 HC ***(refd)***

Sia Sung Ho v. Usaha Cendera Cerah Sdn Bhd [2007] 9 CLJ 27 HC ***(refd)***

Sim Lim Finance Ltd v. Highlight Industry Pte Ltd & Ors [1986] 1 LNS 66 HC ***(refd)***

Tan Geok Lan v. La Kuan [2004] 2 CLJ 301 FC ***(refd)***

Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram [1998] 4 CLJ 883 CA ***(refd)***

The Government of India v. Cairn Energy India Pty Ltd & Anor [2012] 3 CLJ 423 FC ***(refd)***

Toh Hock Thye & Ors v. Toh Chwee Biow [1981] 1 LNS 143 FC ***(refd)***

Trill v. Sacher [1993] 1 All ER 452 ***(refd)***

Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Anor v. Lee Boon Tin [1998] 4 CLJ 368 CA ***(refd)***

A *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 9 CLJ 785 FC* ***(refd)***

United Malayan Banking Corporation Bhd v. Petroleum Marketing Sdn Bhd & Ors [2005] 2 CLJ 550 HC ***(refd)***

Vasudevan v. T Damodaran & Anor [1981] CLJ 84; [1981] CLJ (Rep) 101 FC ***(refd)***

B *Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors [1983] 1 CLJ 191; [1983] CLJ (Rep) 428 FC* ***(refd)***

Zaitun Marketing Sdn Bhd v. Boustead Eldred Sdn Bhd [2010] 3 CLJ 785 FC ***(refd)***

C **Legislation referred to:**

Rules of the High Court 1980, O. 18 r. 19, O. 25 r. 2(4), O. 32 r. 2(2), O. 34 rr. 2, 3, 7, O. 92 r. 4

For the plaintiff - Sallehuddin; M/s Sidek Teoh Wong & Dennis
For the defendant - Oon Wei Li; M/s Gananathan Loh

D *Reported by Najib Tamby*

JUDGMENT

E **Hamid Sultan Abu Backer J:**

[1] This is my judgment in respect of the defendant's application (encl. 26) to strike out the plaintiff's action for want of prosecution, and the plaintiff's application (encl. 28) for extension F of time to file the amended writ and statement of claim.

[2] The learned deputy registrar had prepared a chronology of status of the file, and it is marked as encl. 41. It is clear from the chronology that: (i) the suit was filed in 2003; (ii) the plaintiff has G not taken reasonable steps to proceed with the matter for trial; (iii) even the amendment application which was allowed, was not acted for a number of years; (iv) the managing judge had as early as 2010, directed the plaintiff to file an application for extension of time; and (v) the application for extension was only filed in H 2012, after the defendant had filed the application to strike out the writ for want of prosecution.

[3] The plaintiff takes a preliminary objection to the defendant's application on the ground that, the ground which the defendant's I application is based on O. 34 r. 7 of the Rules of the High Court 1980 and/or inherent jurisdiction of the court is misconceived. It is the plaintiff's contention that the plaintiff has filed two

forms 63 for case management, and if the defendant had intended to strike out the matter, it ought to have done so earlier in reliance of O. 34 r. 2 of the Rules of the High Court 1980, which reads as follows:

> (1) The plaintiff shall, not later than 14 days after the close of pleadings under Order 18, rule 20, cause to be issued from the Registry of the Court a notice in Form 63 requiring the parties to the action to attend before the Court.
>
> (2) If the plaintiff fails to comply with the provisions of paragraph (1), the Court may issue a notice in Form 64 to the plaintiff to show cause why the action should not be struck out.

The plaintiff also relies on the decision of Justice Mohd Hishamudin Mohd Yunus in *Idealmart Rukindo Sdn Bhd v. Capital OCA Berhad & Anor* [2009] 1 LNS 75, wherein it was held:

> In my judgment, on the facts, the defendants have correctly invoked Order 34 rule 2(2) as pleadings were deemed to be closed and the plaintiff had taken no step to file Form 63 for case management before the Judge. However, if we were to examine closely the provisions of Order 34 rule 2(2), the correct relief to pray for in an application pursuant to Order 34 rule 2(2), is not to directly apply for a striking out of the writ action for want of prosecution, but to first apply to the Judge to issue to the plaintiff a Form 64 Notice requiring the plaintiff to show cause as to why the action should not be struck out. If the Judge were to grant the application, the Judge would direct the Registrar to issue to the plaintiff a Form 64 Notice. Once served with the Form 64 Notice, the plaintiff would have to appear before the Judge to show cause. In other words, under the scheme of the provisions of Order 34 rules 2; and 3, as introduced in the year 2000 by the Rules of the High Court (Amendment) 2000 (see PU (A) 342/2000), a Judge has no power to strike out a plaintiffs action for want of prosecution unless the plaintiff has first been duly served with a Form 64 Notice, and this notice can only be issued upon the direction of a Judge acting under Order 34 rule 2(2).
>
> Now, moving to the alternative provision of the Rules of the High Court that has been invoked by the defendants, I do not think in the present case it was proper for the defendants to have invoked (in the alternative) Order 92 rule 4, since there is already a specific provision to deal with the matter at hand, namely, Order 34 rule 2(2).

[4] I must say that the plaintiff has quoted the above case out of context, and it does not fit in to the factual matrix of the case. In a case where the file is dormant after close of pleadings, then O. 32 r. 2(2) comes into operation, and the defendant can rely on the said order, and apply to the judge to issue a Form 64 Notice to the plaintiff requiring him to show cause as to why the action should not be struck out. I must say that the rules of procedure have many provisions to enable the court to strike out for various reasons. These are found for examples: O. 18 r. 19, O. 25 r. 2(4), O. 34, O. 92 etc. All these provisions are complimentary, and not competitive to the powers conferred on the court. Even O. 34 uses the word 'may' in relation to striking out. The rules of court *per se* do not specifically say that any complaint in relation to striking out application must specifically state the relevant provision of the rules of court even though, in practice, the applicant normally say so and at least, in the affidavits the relevant prayers he is seeking.

[5] Even if the applicant does not specifically state the relevant rules of the court or wrongly states the order, the court always has powers to condone the error or non-compliance. The court under O. 34 now has a wide discretion at the case management stage to deal with any of the orders whether or not formal application has been made. The only restriction and/or caveat placed is that the court on its own motion cannot strike out the matter without issuing a show cause letter or 'unless order' etc., unless O. 34 r. 3 applies. The said order reads as follows:

> (1) If the parties to the action fail to appear before the Court upon the return date stated in the notice in Form 63, the Court may in its absolute discretion make any order as meets the ends of justice, including striking out the action or any defence or counterclaim, or other pleading or entering judgment against the defendant, or if there are several defendants, then against one or more of them or it may, after recording his reasons for doing so, adjourn the proceedings to another date.
>
> (2) Where a notice in Form 64 has been issued pursuant to the provisions of rule 2(2), the Court may, upon the return date specified in such notice, strike out the action or make any other order or give such directions as may be specified in the order.

[6] In *Tan Geok Lan v. La Kuan* [2004] 2 CLJ 301, Justice Mohd Noor Ahmad had this to say: A

> The significance of this procedure (O. 34) is that it marks a change from the traditional position under which the progress of cases was left largely in the hands of the parties. Now, under the procedure the court controls the progress of cases by the exercise of its powers given to it to enable it, and not the parties, to dictate the progress of cases at the pre-trial stage, ensuring that the practices and procedures applicable during that stage are complied with promptly and not abused. B C

In the instant case, the defendant's application and complaint are related to want of prosecution. The court has powers to deal with this issue under O. 34, and also O. 25 r. 2(4) which reads as follows:

> If, on the summons for directions, an action is ordered to be transferred to the Subordinate Courts, nothing in this Order shall be construed as requiring the Court to make any further order on the summons. D

And also under O. 92 r. 4, inherent jurisdiction of the court, which reads as follows: E

> For the removal of doubts it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court. F

[7] The parties have relied on the following cases: *Idealmart Rukindo Sdn Bhd v. Capital OCA Berhad & Anor* [2009] 1 LNS 75; *Tan Geok Lan v. La Kuan* [2004] 2 CLJ 301; *Ratnam v. Cumarasamy & Anor* [1964] 1 LNS 237; *Jublilee Karonoh v. Ahmad Patong & Ors* [2011] 1 LNS 1372; *Birkett v. James* [1977] 2 All ER 801; *Toh Hock Thye & Ors v. Toh Chwee Biow* [1981] 1 LNS 143; *Md Amin Md Yusof & Anor v. Cityvilla Sdn Bhd* [2004] 3 CLJ 88; *Sia Sung Ho v. Usaha Cendera Cerah Sdn Bhd* [2007] 9 CLJ 27; *Negara Properties Sdn Bhd v. Akitek Bersekutu Malaysia (sued as a firm) & Ors* [1996] 2 CLJ 923; *Sim Lim Finance Ltd v. Highlight Industry Pte Ltd & Ors* [1986] 1 LNS 66; *Hock Seng Construction Sdn Bhd & Anor v. Yeoh Poh Owi & Anor* [2001] 4 CLJ 1; *Mokhtar Amin v. Mohamed Moktar Omar* [2001] 4 CLJ 489; *Lee Mun Tuck v. Tan Chin Kah & Anor* [1991] 1 CLJ 631; [1991] 4 CLJ (Rep) 929; *Genisys Integrated Engineers Pte Ltc v. UEM Genisys Sdn Bhd* G H I

& Ors [2009] 1 LNS 1202 ; *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 9 CLJ 785; *Zaitun Marketing Sdn Bhd v. Boustead Eldred Sdn Bhd* [2010] 3 CLJ 785; *Ng Yok Gee & Anor v. CTI Leather Sdn Bhd; Metro Brilliant Sdn Bhd & Ors (intervener)* [2006] 3 CLJ 360; *Jallcon (M) Sdn Bhd v. Nikken Metal (M) Sdn Bhd (No. 3)* [2002] 7 CLJ 400; *Yamaha Motor Co Ltd v. Yamaha (M) Sdn Bhd & Ors* [1983] 1 CLJ 191; [1983] CLJ (Rep) 428; *Kilang Papan Pulau Sebang Sdn Bhd v. Lim Trading & Co* [2004] 1 LNS 370; *Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor and another appeal* [2008] 6 CLJ 334; *Saeed U Khan v. Lee Kok Hooi* [2000] 7 CLJ 454; *Nadarajan Verayan v. Hong Tuan Teck* [2008] 1 CLJ 798; *Punca Klasik Sdn Bhd v. Seok Kim Leow* [1996] 4 CLJ 399; *Ong Guan Teck & Ors v. Hijjas Kasturi* [1982] CLJ 31; [1982] CLJ (Rep) 616; *Thiruchelvasegaram Manickavasegar v. Mahadevi Nadchatiram* [1998] 4 CLJ 883; *The Government of India v. Cairn Energy India Pty Ltd & Anor* [2012] 3 CLJ 423; *MBF Finance Bhd v. Alluwi Salleh T/A ABS Bina Enterprise & Anor [2002] 2 CLJ 133; Abdul Rahim Ponniah Abdullah v. Kulim Intensive Driving Centre Sdn Bhd* [2000] 1 LNS 204; *Malayan Flour Mills Bhd v. Teh Wee Kok* [2005] 7 CLJ 213; *Negara Properties Sdn Bhd v. Akitek Bersekutu Malaysia & Ors* [1996] 2 CLJ 923; *Vasudevan v. T Damodaran & Anor* [1981] CLJ 84[1981] CLJ (Rep) 101; *United Malayan Banking Corporation Bhd v. Petroleum Marketing Sdn Bhd & Ors* [2005] 2 CLJ 550; *Trill v. Sacher* [1993] 1 All ER 452; *Sia Sung Ho v. Usaha Cendera Cerah Sdn Bhd* [2007] 4 MLJ 452; *Confidence Concrete Sdn Bhd v. Shimizu Peremba Sdn Bhd* [1994] 3 CLJ 300; *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Anor v. Lee Boon Tin* [1998] 4 CLJ 368; *MAE Sdn Bhd & Ors v. Perwira Habib Bank Malaysia Bhd, Kuala Terengganu* [1999] 4 CLJ 709; *American International Assurance Bhd v. Coordinated Services L Design Sdn Bhd* [2012] 1 CLJ 506.

Brief Facts

[8] The issue of delay is well-articulated in the submission of the defendant which can be summarised as follows:

(a) This action was initiated by the plaintiff eight years ago in 2003.

(b) On 21 February 2005, the court ordered the plaintiff to amend its pleadings to replace Genisys Integrated with UEM Genisys as the plaintiff.

(c) Two years after the order dated 21 February 2005, UEM Genisys sought leave from the court to substitute UEM Genisys as the plaintiff and leave was granted by the court on 4 February 2008 requiring UEM Genisys to amend the writ of summons and statement of claim. The defendant had appealed against the said order dated 4 February 2008 but was dismissed by the judge in chambers on 23 May 2008.

(d) Since the dismissal in May 2008, although UEM Genisys had acquired permission from the court to amend the writ of summons and statement of claim, they had failed to file the amended writ of summons and statement of claim until recently in February 2012 (after four years had passed) which they now seek to extend time for filing the amended writ of summons and statement of claim.

[9] The issue and reasons of delay have been explained by the learned counsel for the plaintiff in their submission encl. 36, *inter alia*, reads as follows:

> Plaintiff seeks this Honourable Court's permission to explain the facts of this case as follows:
>
> 3.1 Genisys Integrated Engineers Pte Ltd ("GIE") in the capacity of representative/derivative action claimed against Defendant for the benefit of UEM Genisys Sdn Bhd ("UEG") for a debt amounting to RM3,625,731.78 pursuant to a contract entered into by UEG and the Defendant for mechanical and electrical services/works in a Project known as "Wakaf College" in Air Keroh, Malacca.
>
> 3.2 UEG sent a letter of demand to Defendant on 11.11.2003 to demand the said debt however Defendant failed, refused and/or neglected to make full payment for the said debt.
>
> 3.3 GIE filed a Writ of Summons and Statement of Claim on 19.11.2003. Subsequently, Defendant entered a Memorandum of Appearance on 30.04.2004 and Statement of Defence dated 28.05.2004.
>
> 3.4 On 28.05.2004, Defendant filed an application to set aside the said Writ of Summons and Statement of Claim and Defendant's application was allowed with costs. GIE has subsequently filed a Notice of Appeal to Judge in Chambers dated 10.09.2004 wherein the GIE's appeal was allowed on 21.02.2005.

3.5 At the same time, GIE also filed a Summons in Chambers dated 16.06.2004 for "Further And Better Particulars". From the Solicitor's record, the Court had not given any direction to either parties and the application has not been heard and disposed of to date.

3.6 UEG was then wound up by a Court Order dated 20.10.2005 *vide* Winding Up Petition No: D3-26-29-2001 [See Exhibit OKH-6] by UEM Group Berhad [formerly known as United Engineers (Malaysia) Berhad] and the Liquidators were appointed *vid*e Order (Enclosure 166) dated 17.01.2006 [See Exhibit OKH-7] to take over UEG's financial matters, businesses and suits.

3.7 Ever since the appointment of the Liquidators, there were *bona fide* discussions between the Plaintiff and the Defendant with the intention to reach an out-of-court settlement. This fact was acknowledged by the Defendant in paragraph (15), Defendant's 2nd Affidavit wherein the Defendant states that all the discussions between UEG and the Defendant was on a without prejudice basis.

3.8 However, the discussions were not fruitful and the Plaintiff (Liquidators) had on 23.07.2007 sought to amend the Writ of Summons and Statement of Claim wherein UEG (In Liquidation) was to take over the claim and GIE ceased to be a necessary party in this action. The Plaintiff's application was allowed on 04.02.2008 but the Defendant appealed against the Order and the Defendant's Appeal was dismissed pursuant to the Court Order dated 23.05.2008.

3.9 At the same time (in the Winding Up Court), GIE appealed against the Winding Up Order dated 20.10.2005 [See Exhibit "OKH-6"] wherein the Court of Appeal Putrajaya had on 14.07.2008 [See Exhibit "OKH-8"] allowed the Appeal and the Winding Up Petition was dismissed. Therefore the appointment of Liquidators were also set aside.

3.10 The Plaintiff's solicitors, Messrs Nor Azmi & Co filed a Notice to Attend Pre-Trial Case Management dated 29.03.2010 [See Exhibit "OKH-1"].

3.11 The Petitioner, UEM filed an appeal to the Federal Court against the decision of the Court of Appeal Putrajaya and eventually on 06.09.2010 [See Exhibit "OKH-9"], the Federal Court of Putrajaya held that the Order dated

14.07.2008 was set aside and the Winding Up Order dated 20.10.2005 was reinstated. Therein also the Liquidators were also reinstated.

3.12 Subsequently, as the Liquidators were reinstated, there was a change in the Plaintiff's solicitor on 24.02.2011 wherein Messrs. Khairul, Suhaila & Hazlina was appointed by the Plaintiff to proceed with this action [See Exhibit "OKH-2"].

3.13 Plaintiff then appointed Messrs Zul Rafique & Partners as the Plaintiff's solicitor in which a 2nd Notice to Attend Pre-Trial Case Management dated 03.01.2012 was filed [See Exhibit "OKH-3"].

3.14 Defendants filed this Application for Striking Out Plaintiff's Claim for want of Prosecution dated 06.01.2012;

3.15 On 09.02.2012, Messrs. Sidek Teoh Wong & Dennis was appointed by the Plaintiff to proceed with the cause of action against Defendant. [See Exhibit "OKH-4"].

3.16 On 16.02.2012, the Plaintiff filed an Application for Extension of Time to file the Amended Writ Summons and Statement of Claim.

[10] I have read both the applications, affidavits and submissions of the parties in detail. I am grateful to the learned counsels for the comprehensive submissions on the facts and law. I do not wish to repeat the same save to deal with the core issues. After having given much consideration to the submission of the learned counsel for the plaintiff, I take the view that the application for striking out want of prosecution must be allowed, and the application for extension of time must be dismissed with costs. My reasons, *inter alia*, are as follows:

(a) It is trite that: (i) the underlying principle in striking out for want of prosecution is that a plaintiff who has commenced an action against a defendant must comply with the prescribed rules of practice to prosecute his action expeditiously; (ii) a judge has a discretionary power to strike out an action for want of prosecution if either the default has been intentional and contumelious, or the plaintiff has been guilty of inordinate and inexcusable delay in prosecuting his claim and such delay gives rise to a substantial risk that it is not possible to have a fair trial, or is likely to cause or to have caused serious prejudice to the defendant irrespective of whether the

prejudice affects the actual conduct of the trial; (iii) and there is no rule of law to deprive the courts of the power to exercise their discretion to strike out an action for want of prosecution, no matter what the conduct of the defendant may have been, though the conduct is a relevant factor to be taken into account by a judge in exercising his discretion (see *Vasudevan v. T Damudaran & Anor* (*supra*); *Negara Properties Sdn Bhd v. Akitek Bersekutu Malaysia (sued as a firm) & Ors* (*supra*)).

(b) It is also trite that the court has inherent jurisdiction to strike out any cause or matter for any justifiable reasons within the norms of procedural jurisprudence and practice. More so now under O. 34 of the Rules of the High Court 1980 which requires the court to deal with such issues at case management stage itself to ensure just, economical and expeditious disposal of the case (see *Charles Forte Investment Ltd v. Amanda* [1963] 1 Ch D 240; *Chip Chong Sawmill Co Sdn Bhd & Ors v. Chai Khiun Fui* [1978] 1 LNS 28). I must say here that any form of delay may amount to abuse in the present system of 'tracking' and case management and the general undertaking given by the Chief Justice to the public that any suit in the court filed will be disposed of within 9 to 12 months.

(c) I agree with the submission of the learned counsel for the defendant that:

(i) there is a total delay of 8 years since the commencement of the action by the Plaintiff;

(ii) there is a total delay of 4 years, in which the Plaintiff ought to have amended its pleadings after the grant of the Order dated 4.2.2008;

(iii) there is a total delay of 2 years, in which the Plaintiff ought to have seek for extension of time to amend its pleadings upon being directed by the Court to do so on 29.4.2010.

I agree with the submission of the learned counsel for the defendant that the plaintiff has been lackadaisical in its conduct throughout the proceedings.

(d) The plaintiff's argument on the issue of liquidator having been appointed does not in any way prohibit the plaintiff from proceeding with the action according to law. They could have obtained appropriate sanction, and if there is any likelihood of delay to prosecute the matter to seek necessary orders from the court including an order for stay of proceedings. All these steps were not taken by the plaintiff.

[11] For reasons stated above, the defendant's application encl. 26 is allowed with costs of RM5,000, and the plaintiff's application is dismissed with costs of RM2,000. The defendant to pay allocatur fees before the extraction of order for costs, and the deputy registrar to issue certificate for the allocatur.

[12] I hereby order so.